Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-453

WILLIAM HENRY ROBERTS,

Petitioner,

v

THE PEOPLE OF THE STATE OF MICHIGAN

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

WILLIAM L. CAHALAN
Prosecuting Attorney
Wayne County
State of Michigan

EDWARD REILLY WILSON
Principal Attorney, Appeals

ANDREA L. SOLAK (P-25217)
Assistant Prosecuting Attorney
1441 St. Antoine, 12th Floor
Detroit, Michigan 48226
Phone: (313) 224-5799

ISSUES PRESENTED

I.

DOES THE MICHIGAN FELONY FIREARM STATUTE AND MULTIPLE CONVICTIONS ARISING THEREUNDER PRESENT A SUBSTANTIAL FEDERAL DOUBLE JEOPARDY QUESTION?

II.

DID THE COURT OF APPEALS PROPERLY PERFORM THE MINISTERIAL TASK OF CORRECTING A SENTENCE WHICH WAS NOT IN ACCORDANCE WITH THE STATUTORY MAXIMUM?

III.

DOES SUFFICIENT EVIDENCE EXIST TO JUSTIFY A RATIONAL TRIER OF FACT IN FINDING GUILT BEYOND A REASONABLE DOUBT, AND THEREBY JUSTIFY SUBMISSION OF THE CASE TO THE JURY FOLLOWING THE DENIAL OF A MOTION FOR DIRECTED VERDICT?

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STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case.

REASONS FOR DENYING THE WRIT

I.

THE MICHIGAN FELONY FIREARM STATUTE AND MULTIPLE CONVICTIONS ARISING THEREUNDER DOES NOT PRESENT A SUBSTANTIAL FEDERAL DOUBLE JEOPARDY QUESTION.

Appellant challenges the Michigan statute MCL 750.227b as violative of the Fifth Amendment protections of the United States Constitution and Art 4 Sec 25 of the Michigan Constitution. The Michigan Supreme Court rejected the federal constitutional challenge. Wayne County Prosecutor v Recorder's Court Judge, 406 Mich 374 (1979). An appeal from the Michigan Supreme Court was dismissed for want of a substantial federal question. Brintley et al v Michigan, 62 L Ed 2d 317 (1979). A decision by the United States Supreme Court to dismiss an appeal challenging a state statute against a federal claim is a decision on the merits. Hicks v Miranda, 422 US 332, 9 S Ct 2281, 45 L Ed 2d 223 (1975). Petitioner's challenge fails.

II.

THE COURT OF APPEALS PROPERLY PERFORMED THE MINISTERIAL TASK OF CORRECTING A SENTENCE WHICH WAS NOT IN ACCORDANCE WITH THE STATUTORY MAXIMUM.

The Court of Appeals in correcting an erroneously entered maximum sentence performed a ministerial act of conforming the sentence to the statutorily mandated period. People v Robert A. Smith, 35 Mich App 349 (1971). Michigan Courts have held that any sentence imposed which is not in accordance with the statutory

maximum is a nullity. In re Lemire, 360 Mich 693 (1970), In re O'Dell, 365 Mich 429 (1962). The correction of an invalidly entered sentence does not raise double jeopardy considerations. Bozza v United States, 330 US 160, 67 S Ct 645, 91 L Ed 2d 808 (1947). The defendant has provided no authority or rationale to support a due process or equal protection challenge; therefore, the same must be denied.

III.

SUFFICIENT EVIDENCE EXISTS TO JUSTIFY A RATIONAL TRIER OF FACT IN FINDING GUILT BEYOND A REASONABLE DOUBT, AND THEREBY JUSTIFY SUBMISSION OF THE CASE TO THE JURY FOLLOWING THE DENIAL OF A MOTION FOR DIRECTED VERDICT.

Throughout the appellate journey through the state courts, petitioner has attacked the sufficiency of evidence to sustain the jury verdict of guilt beyond a reasonable doubt. The issue as present in the Petition is framed in terms of a denial of the motion for a directed verdict. The issue may involve an intellectual wrestle which resolves in a determination of whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. Jackson v Virginia, ____ US ___; 99 S Ct 2781; 61 L Ed 2d 560 (1979). The Michigan Court of Appeals employed a like test to the conclusion that sufficient evidence was adduced. An examination of the record reveals that the prosecution proved the elements beyond a reasonable doubt and rebutted the claim of self-defense. Even though the victim was approaching the defendant, no proofs showed he was armed. The testimony of Rose Blankenship shows that defendant shot the victim twice as he approached him. The record clearly supports an inference that the defendant exceeded the amount of force he could properly use. The submission of the case to the jury was entirely proper: whether defendant

acted criminally or excusably was a jury decision, and defendant cannot retry the issue in this forum. The Court of Appeals is not a reviewing jury. People v Eagger, 4 Mich App 449 (1966); The Appellate Courts do not substitute their judgment for the jury's, since credibility is for the fact-finder. People v Knapp, 34 Mich App 325 (1971).

If defendant is arguing that the jury's finding was against the great weight of the evidence, then this Court is bound to consider the evidence as if the jury believed the People's witnesses. People v Paugh, 324 Mich 108 (1949). Doing so, this Court must conclude that the evidence amply warranted a finding of guilt. People v Bradley, 4 Mich App 660 (1966).

Barry Wilson spoke of two instances of premeditation in which defendant indicated he would kill Jerry Ouellette if the victim did not stop harassing him about stealing his ex-girlfriend. Blankenship testified to the shots being fired as the victim approached defendant, The defendant admitted he shot an unarmed man in the knees, and the second shot was an accident. Rose Blankenship's testimony disputed that claim, in any event the jury was free to reject defendant's disclaimer and find him guilty. People v Haack, 396 Mich 367 (1975). The evidence was sufficient to justify a rationale trier of fact in finding guilt beyond a reasonable doubt.

CONCLUSION

Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

WILLIAM L. CAHALAN
Prosecuting Attorney
Wayne County
State of Michigan

EDWARD REILLY WILSON
Principal Attorney, Appeals

Andrea L Solak
ANDREA L. SOLAK (P-25217)
Assistant Prosecuting Attorney
1441 St. Antoine, 12th Floor
Frank Murphy Hall of Justice
Detroit, Michigan 48226
Phone: (313) 224-5799

ALS/do
Dated: October 9, 1980.